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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,199	02/26/2002	Hai Trieu	4002-2950/PC464.00	5676
52196	7590	02/07/2006		
KRIEG DEVAULT LLP ONE INDIANA SQUARE, SUITE 2800 INDIANAPOLIS, IN 46204-2709			EXAMINER PHILOGENE, PEDRO	
			ART UNIT	PAPER NUMBER
			3733	
DATE MAILED: 02/07/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/083,199	TRIEU ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Pedro Philogene	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21,23-31,33-38 and 78-99 is/are pending in the application.
- 4a) Of the above claim(s) 15-21,23-31,34,36,37 and 89 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14,33,35,38,78-88 and 90-99 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/6/05 has been entered.

***Election/Restrictions***

In response to applicant's argument that claims 15-31, 34,36,37, 89, read on the elected species I, i.e. FIG.1, it is noted that the description for the for the embodiment shown in Fig.1 does not disclose the characteristics of the claims as set forth above. Therefore, the above claims are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic claim. Election was made without traverse in the reply filed on September 13, 2004.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1-14, 33,35,38,78-88,90-99 are rejected under 35 U.S.C. 102(e) as being anticipated by Carl et al (6,607,530).

With respect to claims 1, 78, 91, Carl et al disclose a spine stabilization system comprising an implant (160) having first and second ends, at least a portion of one of the first and second ends structured for positioning in use in a channel formed in a first vertebral body; and at least one anchor (400) sized to be embedded within the first vertebral body without protruding from the first vertebral body; as set forth in column 10, lines 18-25, column 13, lines 64-67. at least one of a first end and second end of the implant is angled relative to the portion for positioning into the first vertebral body in the tunnel; as best seen in FIGS.6a-b; including means (the curvature in FIGS.6,a-b) for conforming to a first vertebral body. The at least one anchor and the one of the first and second ends being configured to engage one another in the tunnel with the means for conforming in contact with the first vertebral body; as best seen in FIGS.6,a-b.

With respect to claims 2-14, 33, 35, 38,79-88, 90,92-99, Carl et al discloses all the limitations, as set forth in column 10, lines 18-25, column 11, lines 26-67, column 13, lines 8-17, lines 64-67, column 14, lines 35-48.

### ***Response to Amendment***

Applicant's arguments with respect to claims 1-7, 33, 35, 38, 78-84, 87, 88, 90-97 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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5,989,256

11-1999

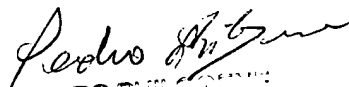
Kuslich et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene  
February 02, 2006

  
**PEDRO PHILOGENE**  
FEBRUARY 02, 2006